

FILED

MHW

FEB 05 2008
2-5-2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

JUAN SANCHEZ, JR.,
PETITIONER.

VS.

CASE NO. 07-C-6099

EDDIE JONES, WARDEN OF THE
PONTIAC CORRECTIONAL FACILITY,
RESPONDENT.

PETITIONER'S REPLY TO THE RESPONDENT'S MOTION TO DISMISS

NOWCOMES The Petitioner, JUAN SANCHEZ JR., Pro Se, and Moves This Honorable Court to Deny the Respondent's Motion To Dismiss the Petitioner's Petition For Habeas Corpus relief and Grant the Relief Requested. In support thereof, The Petitioner States as Follows:

1.) In the Respondent's Motion to Dismiss the Petitioner's Petition For Habeas Corpus Relif, The Respondent Raises the Affirmative Defense that the Petitioner's Petition is Time Barred and Does not respond to the Merits of Said Petition. SEE RESPONSE FROM RESPONDENT.

2.) The Petitioner contends that His Petition is not Time Barred as the Respondent asserts, where the Petitioner Diligently followed up with Timely Filing The Required Pleadings in the Appropriate Court's to Advance His Case to the Instant Court, all Pro Se and being of Limited Education. SEE PETITIONER'S PENDING MOTION FOR APPOINTMENT OF COUNSEL ON FILE, (EXHIBIT A)-

3.) The Petitioner Contends that the Days in question by the Respondent that the Petitioner is Over the one Year Time Period in which to file His Habeas Petition is not accurate. Where inmate Filings are Filed when the Inmate Deposit His or Her Pleadings in the Institutional Mail For Filing, and the Petitione has no Control over when He Receives Court orders in which to Properly Respond. HOUSTON V. LACK, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245; SEE ALSO FEDERAL APP.R 4(c) and 25(a)

4.) Therefore, The Time Period in Which the Petitioner had to File His Petition For Habeas Corpus Relief should be Calculated from the Point in which the Petitioner Placed His Pleadings in the State Court in the Institutional Mail for Mailing to the Court Through the United States Postal Service.

5.) The Antiterrorism and Effective Death Penalty Act of 1996, sets a One Year Time Period in which a Petitioner is to file a Petition For Habeas Corpus Relief from State Court Judgment, and that Limitations Period is Tolloed while a State Prisoner seeks to exhaust His State Remedies. CAREY V. SAFFOLD, 536 U.S. 214, 122 S.Ct. 2134, 153 L.Ed.2d 260; CLAY V. UNITED STATES, 537 U.S. 522, 527-529, 123 S.Ct. 1072, 155 L.Ed.2d 88; 28 U.S.C. § 2254

6.) In the Case at Bar, The Petitioner Contends that He Placed His Petition For Habeas Corpus Relief in the Institutional Mail at the Pontiac Correctional Facility within the One Year Time Period in One Year From the Illinois Supreme Court's Denial of His Petition For Leave to Appeal Concerning His State Post-Conviction Petition. O'SULLIVAN V. BOERCKEL, 526 U.S. 838, 119 S.Ct. 1728, 144 L.Ed.2d 1; ANDERSON V. LITSCHER, 281 F.3d 672

7.) After an accurate Calculation of the Tolling of the One Year Time Limitation in which the Petitioner had to File His Habeas Petition, and this Honorable Court Should Find that The Pro Se Limited Education Petitioner has Missed His Deadline by a Couple of Days. The Petitioner Contends that The Issues in the Case at Bar falls with in the exceptional Circumstances to allow this Court to address the Issues setforth in the Habeas Petition, where a Miscarriage of Justice will accure and Fundamental Fairness so Requires. SEE DUNCAN V. WALKER, 533 U.S. 167, 121 S. Ct. 2120, 150 L.Ed.2d 251; EDWARDS V. CARPENTER, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518; BOUSLEY V. U.S., 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828

8.) The Petitioner Contends that Should This Court Find that the Petitioner's Habeas Petition is Timely as the Respondent points out in their Prayer for relief of their Response. The Petitioner Contends that the Respondent Should not be Allowed to respond to the Merits of the Petitioner's Habeas Petition where the Respondents have willfully failed to address the Merits and Wavier or Forfeiture equally applies to the State. SEE TREST V. CAIN, 522 U.S. 87, 118 S.Ct. 478; PIGGIE V. COTTON, 342 F.3d 660; BUGGS V. UNITED STATES, 153 F.3d at 444; HENDERSON V. THIERET, 859 F.2d 492; UNITED STATES V. JACQUES, 345 F.3d 960

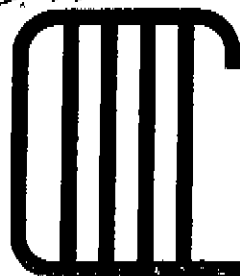
WHEREFORE, FOR THE FOREGOING REASONS, The Petitioner prays for an Order Denying The Respondent's Response to the Petitioner's Petition For Habeas Corpus Relief.

RESPECTFULLY SUBMITTED,


MR. JUAN SANCHEZ JR.
REG. NO. R09249
709 W. LINCOLN ST.
PONTIAC CORRECTIONAL FACILITY
PONTIAC, ILL 61764

EXHIBIT A

original



Illinois
Department of
Corrections


Rod R. Blagojevich
Governor

Roger E. Walker Jr.
Director

Pontiac Correctional Center / 700 W. Lincoln Street / P.O. Box 99 / Pontiac, IL 61764 / Telephone: (815) 842-2816 / TDD: (800) 526-0844

MEMORANDUM

TO: Robert Griffin
Assistant Warden of Programs

FROM: Augustin Twagillimana 
Educational Facility Administrator

RE: Revised Protective Custody-West Segregation Release
Library Schedule

I am requesting the following library schedule be implemented immediately:

Monday	8:30 – 10:00	SPC 5 Gallery	12:00 – 2:00 SPC 7 Gallery
Tuesday	8:30 – 10:00	SPC 7 Gallery	12:00 – 2:00 SPC 5 Gallery
Wednesday	8:30 – 10:00	SPC 6 & 8 Galleries	12:00 – 2:00 1 & 3 Galleries
Thursday	8:30 – 10:00	SPC 1 & 3 Galleries	12:00 – 2:00 6 & 8 Galleries
Friday	8:30 – 10:00	Offender library workers/patrons as assigned	12:00 – 2:00 West Seg Release

A Security Officer will need to be assigned to the library to cover the above times.

The maximum amount of offenders allowed in the library at one time is 35, excluding workers.

APPROVED:  2/1/06
Robert Griffin, Assistant Warden of Programs

MGS/pr

cc: Warden Pierce
A/W Leibach
7-3 Shift Commander
Major D. Kennedy, SPC
Lt. R. Brewer, SPC
Lt. C. Shaw, SPC
West Seg Lt.
SPC Cage
West Cage

Library Officer
Library Chron File

Exhibit # A.

original

United States IN THE District Court

Northern District of Illinois

U.S. ex rel. JUAN Sanchez JR.)
Plaintiff/Petitioner)

Vs.)

No. 07-C-6099

Eddie Jones, Warden of The)
Defendant/Respondent)
Pontiac C.C.)
Facility.)

PROOF/CERTIFICATE OF SERVICE

TO: Clerk of the U.S.
District Court, U.S. Courthouse
219 South Dearborn St.
Chicago, Illinois 60604

TO: Lisa MURRAY Madigan
Attorney General's office
100 West Randolph St. 12th Floor
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on January 29, 2008, I placed the documents listed below in the institutional mail at Pontiac C.C. Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service.

Respond to Motion to Dismiss

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/1-109 I declare, under penalty of perjury that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge and belief.

DATED: 1/29/08

/s/

Name: JUAN Sanchez JR.

IDOC No. B-09249

Pontiac

POB

99

Correctional Ctr.

Pontiac

IL 61764